

A TRUE COPY CERTIFIED TO FROM THE RECORD

Cz Ebob Tuf x bsupo Ef d 13- 3119

DATED: 12-4-08

SIGNS: *Tom Dwyer*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PENNSYLVANIA

Ef d 13-3119

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

C-08-3394 MHP

IN RE: AVANDIA MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION

MDL No. 1871

TRANSFER ORDER

**Before the entire Panel:** Plaintiffs in three actions pending in the Northern District of California, District of New Mexico, and Western District of New York, respectively, as listed on Schedule A, have moved, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), to vacate the respective portions of our order conditionally transferring the actions to Eastern District of Pennsylvania for inclusion in MDL No. 1871. Responding defendant SmithKlineBeecham Corp. d/b/a/ GlaxoSmithKline (GSK) opposes the motions.

After considering all argument of counsel, we find that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Pennsylvania, and that transfer of the actions to the Eastern District of Pennsylvania for inclusion in MDL No. 1871 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. We further find that transfer of these actions is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Eastern District of Pennsylvania was a proper Section 1407 forum for actions arising from allegations that certain diabetes drugs manufactured by GSK – Avandia and/or two sister drugs containing Avandia (Avandamet and Avandaryl) – cause an increased risk of heart attack and other physical injury, and that GSK failed to provide adequate warnings concerning that risk. *See In re Avandia Marketing, Sales Practices and Products Liability Litigation*, 528 F.Supp.2d 1339 (J.P.M.L. 2007).

In opposing transfer, plaintiffs variously argue that they have filed motions for remand to state court which remain pending, and/or that their actions involve some unique factual and legal issues. Based on our precedents and for the following reasons, we respectfully disagree with those arguments. First, plaintiffs can present their remand motions to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). Second, transfer under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. *See In re Oxycontin Antitrust Litigation*, 542 F.Supp.2d 1359, 1360 (J.P.M.L. 2008).

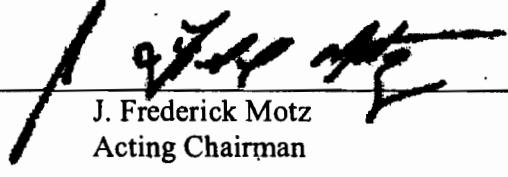
IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these three actions are transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the

\* Judge Heyburn took no part in the disposition of this matter.

- 2 -

Honorable Cynthia M. Rufe for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

**PANEL ON MULTIDISTRICT LITIGATION**



J. Frederick Motz  
Acting Chairman

John G. Heyburn II, Chairman\*  
Kathryn H. Vratil  
W. Royal Furgeson, Jr.

Robert L. Miller, Jr.  
David R. Hansen

**IN RE: AVANDIA MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 1871

**SCHEDULE A**

Northern District of California

Ronald T. Hammer, etc. v. SmithKline Beecham Corp., et al., C.A. No. 4:08-3394

District of New Mexico

Cornelio Martinez, et al. v. SmithKline Beecham Corp., et al., C.A. No. 1:08-677

Western District of New York

John Scardino, Jr. v. SmithKline Beecham Corp., et al., C.A. No. 1:08-530

MICHAEL E. KUNZ  
CLERK'S OFFICE  
CLERK OF COURT

ROOM 2609  
(267) 299-7018

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
U.S. COURT HOUSE  
601 MARKET STREET  
PHILADELPHIA 19106-1797

RE: ADVANDIA MARKETING, SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION; MDL 1871  
**Hammer, CA-N, 4:08-3394**

Dear Clerk:

Enclosed is a Certified copy of the transfer order issued by the Judicial Panel on Multidistrict Litigation directing the transfer of the cases listed on the attached schedule to the ED-PA as part of the MDL 1871 assigned to the Honorable Cynthia M. Rufe.

**Please docket this order on the cases listed on the attached schedule and notify our court by mailing us a certified copy of the docket when completed. We will then log onto pacer and print the case file. You will not be required to forward any documents to our district unless directed otherwise.**

If you have any questions, please call me at (267) 299-7018.

Very truly yours,

MICHAEL E. KUNZ  
Clerk of Court

By: Tom Dempsey  
Tom Dempsey, Deputy Clerk  
MDL Docketing Clerk

Enclosure